

of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(2) [Reserved]

[Order No. 63-92, 57 FR 8263, Mar. 9, 1992, as amended by Order No. 64-92, 57 FR 8263, Mar. 9, 1992]

§ 16.76 Exemption of Justice Management Division.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Controlled Substances Act Non-public Records (JUSTICE/JMD-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Public Law 91-513 (Controlled Substances Act), section 404(b) states that the nonpublic record "shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection."

(2) Information in this system consists of arrest records, including those of co-defendants. The records include reports of informants and investigations. Therefore, access could disclose investigative techniques, reveal the identity of confidential sources, and invade the privacy of third parties.

(c) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Security Clearance Information System (SCIS) (JUSTICE/JMD-008)—Limited access.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(5).

(d) Exemption from subsection (d) is justified for the following reason:

(1) Access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality

made to the source during the investigation. Access may also reveal information relating to actual or potential criminal investigations.

(2) [Reserved]

(e) Consistent with the legislative purpose of the Privacy Act of 1974, the Justice Management Division will grant access to nonexempt material in SCIS records which are maintained by the Security Programs Staff. Disclosure will be governed by the Department's Privacy regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

(f) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Freedom of Information/Privacy Act Records System (JUSTICE/JMD-019).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(g) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

(2) [Reserved]

(h) Consistent with the legislative purpose of the Privacy Act of 1974, the Justice Management Division will grant access to non-exempt material in FOIA/PA records. Exemptions will apply only to the extent that other

correspondence or internal memoranda retained with the request file contain investigatory material for law enforcement purposes.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 6-86, 51 FR 15476, Apr. 24, 1986]

§ 16.77 Exemption of U.S. Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) U.S. Trustee Program Case Referral System, JUSTICE/UST-004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or nec-

essary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[Order No. 1-87, 52 FR 3631, Feb. 5, 1987]

§ 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC-001.